

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

OLIVER MONTGOMERY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.:
	)	
SHERMETA, ADAMS & VON ALLMEN,	)	
P.C.,	)	
	)	
Defendant.	)	
	)	

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**COMPLAINT AND JURY DEMAND**

Plaintiff, OLIVER MONTGOMERY (Plaintiff), through his attorneys, KROHN & MOSS, LTD., alleges the following against Defendant, SHERMETA, ADAMS & VON ALLMEN, P.C. (Defendant):

**INTRODUCTION**

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).
2. Count II of Plaintiff's Complaint is based on the Michigan Occupational Code, *Mich. Comp. Law 339.901 et seq.* (MOC).

**JURISDICTION AND VENUE**

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy."
4. Defendant conducts business in the state of Michigan, and therefore, personal jurisdiction is established.
5. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.

### **PARTIES**

6. Plaintiff is a natural person residing in Niles, Berrien County, Michigan.
7. Plaintiff is a consumer as that term is defined by *15 U.S.C. 1692a(3)* and *Mich. Comp. Law § 339.901(f)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)* and *Mich. Comp. Law § 339.901(a)*.
8. Defendant is a debt collector as that term is defined by *15 U.S.C. 1692a(6)* and *Mich. Comp. Law § 339.901(b)*, and sought to collect a consumer debt from Plaintiff.
9. Defendant is a collection agency law firm with a business office in Rochester Hills, Michigan.
10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

### **FACTUAL ALLEGATIONS**

11. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor, Capital One Bank (USA), N.A., with an account number ending in 4080 (Defendant's File Number 559340).
12. Plaintiff's alleged debt owed to Capital One Bank (USA), N.A. arises from transactions for personal, family, and household purposes.
13. On April 29, 2009, Plaintiff's counsel faxed a cease and desist and a notice of representation letter to Defendant (Plaintiff's counsel's letter to Defendant and fax confirmation are attached as Group Exhibit A).
14. Despite receiving Plaintiff's counsel's letter (Exhibit A), Defendant communicated with Plaintiff after April 29, 2009, in an attempt to collect a debt (Defendant's letter to Plaintiff dated December 14, 2010, is attached as Exhibit B).

**COUNT I**  
**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

15. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692c(a)(2) of the FDCPA by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney.
- b. Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff after Defendant received Plaintiff's cease and desist letter.

WHEREFORE, Plaintiff, OLIVER MONTGOMERY, respectfully requests judgment be entered against Defendant, SHERMETA, ADAMS & VON ALLMEN, P.C., for the following:

16. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,
17. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*, and
18. Any other relief that this Honorable Court deems appropriate.

**COUNT II**  
**DEFENDANT VIOLATED THE MICHIGAN OCCUPATIONAL CODE**

19. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

20. Defendant willfully violated the MOC based on the following:

- a. Defendant violated §339.915(h) of the MOC by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney.

WHEREFORE, Plaintiff, OLIVER MONTGOMERY, respectfully requests judgment be entered against Defendant, SHERMETA, ADAMS & VON ALLMEN, P.C., for the following:

21. Statutory damages of \$150.00 pursuant to the Michigan Occupational Code, *Mich. Comp. Law § 339.916(2)*,

22. Costs and reasonable attorneys' fees pursuant to the Michigan Occupational Code, *Mich. Comp. Law* § 339.916(2), and
23. Any other relief that this Honorable Court deems appropriate.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, OLIVER MONTGOMERY, demands a jury trial in this case.

DATED: February 21, 2011

RESPECTFULLY SUBMITTED,  
  
KROHN & MOSS, LTD.

By: /s/ Michael S. Agruss

Michael S. Agruss  
Krohn & Moss, Ltd.  
10474 Santa Monica Blvd., Suite 401  
Los Angeles, CA 90025  
Tel: 323-988-2400 x235  
Fax: 866-583-3695  
magruss@consumerlawcenter.com  
Attorneys for Plaintiff

**VERIFICATION OF COMPLAINT AND CERTIFICATION**

STATE OF MICHIGAN

Plaintiff, OLIVER MONIGOMERY, states the following:

1. I am the Plaintiff in this civil proceeding
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U S C. § 1746(2), I, OLIVER MONIGOMERY, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct

1-29-2011

Date

Oliver Montgomery

OLIVER MONIGOMERY

# **EXHIBIT A**

*Debt Counsel for Seniors & the Disabled*



29 April 2009

BY FAX ONLY: 248-652-1292

Page 1 of 3

Shermeta, Adams & Von Allmen, P.C.  
445 South Livernois, Suite 333  
Rochester Hills MI 48308-5016

Re: **Oliver & Alice Montgomery**  
**Alleged creditor: Capital One Bank**  
**Your file or reference No.: 559340/001**  
**Our file No.: 10819**

Dear Sir or Madam:

Please be advised that my law firm represents the above-referenced client for the purpose of enforcing their rights against debt collectors under all applicable federal laws

This letter serves as notice that my client hereby **disputes** the above-referenced alleged debt and requests validation of it in accordance with **15 U.S.C. § 1692g**. Please provide any agreement(s) our client signed with the original creditor, an accounting history showing how you got to the amounts claimed and when this alleged debt was charged off. Unless and until such proof is furnished, we do not recognize any right on your part to attempt to collect any amount from our client through credit reporting or any other means. Moreover, all changes in terms of this alleged debt are hereby objected to and rejected. Please be advised that the continuation of collection activity without adequately responding to these requests may result in a lawsuit against you.

As the client's attorney, I also respectfully inform you that you must **cease** contacting them according to **§§ 1692c(a)(2) AND 1692c(c)** of the **Fair Debt Collection Practices Act**, since this letter not only serves as notice of our representation of this client but also contains a cease and desist order signed and notarized by the alleged debtor. If and when you violate these statutes, I will not hesitate to pursue all legal remedies on behalf of my client in the United States District Court.

Finally, please be advised that this client is insolvent and cannot afford to file for bankruptcy. They exist exclusively on income from **non-garnishable sources; e.g., social security, disability, veteran's or retirement benefits**. I have also enclosed my client's **affidavit** swearing to this fact. As you should know, this income is protected from execution, levy, attachment, garnishment and other legal process by federal law. The attachment or attempted attachment of these benefits is considered a violation of **§ 1692(f)** of the **Fair Debt Collection Practices Act**, so please govern your actions accordingly.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Jerome S. Lamet', is written over a horizontal line.

Jerome S. Lamet, Supervising Attorney  
Debt Counsel for the Seniors and the Disabled  
Cc: Oliver & Alice Montgomery

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Jerome S. Lamet, Supervising Attorney  
The Pontiac Building  
542 South Dearborn  
Suite 1260  
Chicago, Illinois 60605  
V: (312) 939-2221  
F: (312) 939-2741

TRANSMISSION VERIFICATION REPORT

TIME : 04/29/2009 08:35  
NAME : JEROME LAMET LTD  
FAX : 13123563199  
TEL : 13129392221  
SER. # : BR0D8J797996

DATE, TIME  
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*Debt Counsel for Seniors & the Disabled*

**DCSD**

29 April 2009

BY FAX ONLY: 248-652-1292

Page 1 of 3

Shermeta, Adams & Von Allmen, P.C.  
445 South Livernois, Suite 333  
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Finally, please be advised that this client is insolvent and cannot afford to file for bankruptcy. They exist

## **EXHIBIT B**

SHERMETA, ADAMS & VON ALLMEN, P.C.

ATTORNEYS AND COUNSELORS AT LAW  
P.O. Box 5016  
Rochester Hills, MI 48308-5016  
(800) 451-7992  
FAX (248) 519-1701

DECEMBER 14, 2010

OLIVER J MONTGOMERY  
2330 E MAIN ST LOT 14  
NILES, MI 49120

RE: CAPITAL ONE BANK (USA), N.A.

Account Number: \*\*\*\*\*4080  
Our file Number: 559340

Dear OLIVER J MONTGOMERY:

We have recently reviewed your account on behalf of our client,  
CAPITAL ONE BANK (USA), N.A.. As of today's date, the  
balance on this account is \$1,569.87.

Please contact the Recovery Department at 1-800-451-7992 to discuss  
payment arrangements.

Sincerely,  
SHERMETA, ADAMS & VON ALLMEN, P.C.

RECOVERY DEPARTMENT

BN/559340-001  
JMC

NOTICE: THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO  
COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT  
PURPOSE.